IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.114 of 2007
In
Summons for Judgment No.457 of 2006
In
Summary Suit No.997 of 2006

The Mahatma Gandhi Memorial
Employees Provident Fund Trust
and Ors. .. Appellants
(Org.Plaintiffs)

Vs.

The Official Liquidator,
Giltedge Services Management. .. Respondent

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Shri Birendra Saraf i/b Mrs.S.V.Sonawane for the Appellants.

Shri Kedar Dighe for the Official Liquidator-Respondent.

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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 23RD MARCH, 2007

P.C.

1. Heard. Admit. Shri Dighe, the learned advocate waives service for the Respondent.

2. By consent, heard forthwith.

3. Plain reading of the impugned order discloses

that merely on account of failure to give inspection of the documents, the defendant has been granted unconditional leave to defend the suit. Mere failure on the part of the plaintiffs to give inspection of the documents cannot be a justification to grant unconditional leave to defend the suit by the defendant. Once the summons for judgment is issued, it is for the defendant to make out a case for grant of leave to defend. In case there is any delay on the part of the plaintiffs to give inspection of the documents, certainly time can be granted, but that by itself cannot be a ground to defend the suit unconditional.

4. Viewed from this angle, the impugned order cannot be sustained and is liable to be set aside and the matter to be remanded to the Learned Single Judge to proceed with the matter in accordance with the provisions of law, after hearing the parties.

5. The appeal accordingly is allowed. The impugned order is hereby set aside and the matter is remanded to the Learned Single Judge to proceed with the matter in accordance with the provisions of law, after hearing the parties. The plaintiffs shall give inspection of the documents to the defendant/

respondent within 15 days and thereafter the matter to be heard by the Learned Single Judge on the point of leave to defend the suit. No order as to costs.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)